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Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PTO/SB/61 (7-99)

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)
4673120/4650

RECEIVED

JUN 15 2000

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

First named inventor: Kreamer

Group Art Unit: 1614

Application Number: 08/071,052

Examiner: Criaes

Filed: June 4, 1993

Title: Aspirin and Vitamin and/or Trace Element Compositions for the Amelioration and Treatment of Vascular Disease

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

#19

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay

1. Petition fee

- ☒ small entity - fee \$55.00 (37 CFR 1.17(l)).
☐ small entity statement enclosed herewith.
☒ small entity statement previously filed.
☐ other than small entity - fee \$_____ (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of Response to Restriction Requirement (identify the response):

- ☒ has been filed previously on November 30, 1999.
☐ is enclosed herewith.

B. The issue fee of \$ _____

- ☐ has been paid previously on _____.
☐ is enclosed herewith.

date: 09/20/2000 LGIBBS
UVAH11 00000004 08071052
Ref: 09/20/2000 LGIBBS 0008401700
Name/Number: 08071052 \$55.00 CR
FC:

[Page 1 of 3]

Burden Hour Statement: This form is estimated to take 1.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

06/14/2000 VVAH11 00000004 08071052 55.00 OP
01 FC:240

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

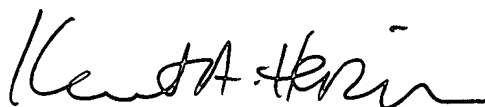
☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☒ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ 55.00 for a small entity or \$ _____ for other than a small entity) disclaiming a period equivalent to the period of abandonment is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

June 8, 2000

Date



Signature

Telephone

Number: (515) 288-2500

Kent A. Herink

Typed or printed name

666 Walnut Street, Suite 2500

Address

Des Moines, Iowa 50309

FAX (JWA) 248-0654
DAN ROSENBERG

Enclosures: ☒ Fee Payment

☐ Reply

☒ Terminal Disclaimer Form

☐ Small Entity Status Form

☐ Additional sheets containing statements establishing unavoidable delay

☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

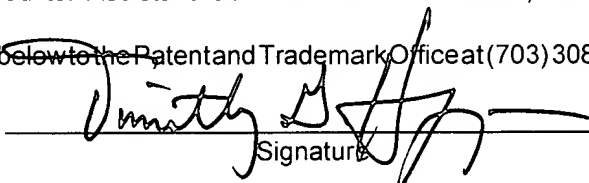
I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

☐ transmitted by facsimile on the date shown below to the Patent and Trademark Office at (703) 308-6916.

June 8, 2000

Date



Signature

TIMOTHY G. HORNECKER

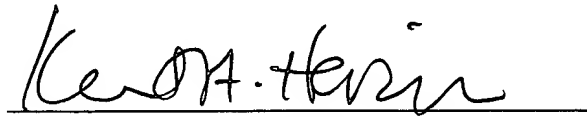
Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY
UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants and by any other party who is presenting statements concerning the cause of delay.

June 8, 2000

Date



Signature

Kent A. Herink

Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

On November 5, 1999, we received an Office action with the cover sheet missing (PTO-90C). The response to the action received on November 5 was a restriction requirement and was filed via facsimile on November 30, 1999. Operating with the understanding that the mailing date was early November 1999, the November 30 filing was thought to be a timely response to the Office action. However, on May 12, 2000, we received a Notice of Abandonment stating that the response was late and without a Petition to Extend the time to Answer and the required fee. On June 7, 2000, we learned from Examiner Criares that the actual mailing date of the Office action was August 19, 1999. As such, the time to respond to the action had already expired by the time we received it in November.

Based on the foregoing, the entire delay in replying to the original action was unavoidable due to the unforeseen fault or imperfection of the U.S. Postal Service, or the U.S. PTO, in delivering and/or mailing the original action.

All actions in response to the Office action were timely and diligent and did not lead to the abandonment.

(Please attach additional sheets if additional space is necessary)



Please type plus sign (+) inside this box → ☐

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PTO/SB/69 (12-97)
Approved for use through 9/30/00. OMB 0651-0031

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

Complete if Known

| | |
|------------------------|--------------|
| Application Number | 08/071,052 |
| Filing Date | June 4, 1993 |
| First Named Inventor | Kreamer |
| Group Art Unit | 1614 |
| Examiner Name | Criares |
| Attorney Docket Number | 4673120/4650 |

RECEIVED

JUN 15 2000

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

☒ PETITIONS DECIDED BY PETITIONS OFFICE

- | | |
|--|---|
| 301 Relating to Public Use Proceedings (37 CFR 1.292) | 503 To waive/suspend rules (37 CFR 1.183) |
| 302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02) | 504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181) |
| 303 To make special - infringement (37 CFR 1.102, MPEP 108.02) | 505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4)) |
| 304 Relating to the Filing/Issuance of Divisional Reissue (37 CFR 1.177) | 506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application |
| 305 To waive or suspend rules (37 CFR 1.183) | 507 To enter priority papers after Issue Fee payment (37 CFR 1.55(a)) |
| 306 To expunge a paper from patent application or patent file (37 CFR 1.59) | 508 To defer issuance of patent (37 CFR 1.314) |
| 307 Withdrawal of Attorney (37 CFR 1.36) | 515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181) |
| 308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103.104) | 516 To waive/suspend rules re patent mailers in Office of Admin. (37 CFR 1.183) |
| 309 Relating to Small Entity (37 CFR 1.28) | 519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182 |
| 310 Relating to reexamination (37 CFR 1.181-1.183) | 521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377) |
| 311 For correction of inventorship for applications - no filing date (37 CFR 1.48) | 523 To issue patent in the name of the Assignee (37 CFR 1.334(c)) |
| 312 For correction of inventorship re PCT applications (37 CFR 1.48) | 525 To withdraw a holding of abandonment (37 CFR 1.181) |
| 313 For filing application without one or more inventors (37 CFR 1.47) | 526 To order a Commissioner-initiated Reexamination proceeding (37 CFR 1.520) |
| 314 For filing PCT application without one or more inventors (37 CFR 1.47) | 527 To convert Provisional Application |
| 315 For extension of time without fee in cases in Application Division (37 CFR 1.136(b)) | 528 To reinstate abandoned Provisional Application |
| 399 For matters before A/C for Patents - not specified | 530 PCT petition-unavoidable |
| 408 Relating to a filing date under 35 USC 111 & 37 CFR 1.53 | 531 PCT petition-unintentional |
| 411 Filing date for application filed by Express Mail (37 CFR 1.10) | 532 To accept unavoidably delayed payment of maintenance fee (37 CFR 1.378 (b)) |
| 412 Filing date for lost application | 533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c)) |
| 501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a)) | 534 Petitions related to reexamination proceedings |
| 502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b)) | 599 For matters before the Deputy A/C for Patents - not specified |

☐ PETITIONS DECIDED BY THE GROUP DIRECTOR

- | | |
|--|--|
| 601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02) | 618 For concurrent Ex parte and Inter parte proceedings (37 CFR 1.212) |
| 602 To make special - continuity of earlier application (37 CFR 1.102, MPEP 708.02) | 619 For return of original oath of patent application (MPEP 604.04(a)) |
| 603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02) | 620 For extension of time (37 CFR 1.136(b)) |
| 604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02) | 621 For interview after Notice of Allowance mailed (MPEP 713.10) |
| 605 To make special - Energy Program (37 CFR 1.102, MPEP 708.02) | 622 Concerning appeal application before transfer of jurisdiction to Board (MPEP 1206) |
| 606 To make special - Recombinant DNA (37 CFR 1.102, MPEP 708.02) | 623 For second or subsequent suspension of action (37 CFR 1.103, MPEP 709) |
| 607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02) | 625 To reinstate Appeals dismissed in Group |
| 608 To reopen prosecution after Board decision (37 CFR 1.198) | 626 From denial of reexamination request (37 CFR 515(c)) |
| 609 For review of final restriction requirement (37 CFR 1.144) | 627 To enter an amendment after payment of Issue Fee (37 CFR 1.312(b)) |
| 610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes | 628 From refusal to issue a Certificate of Correction (37 CFR 1.181, MPEP 1480-1485) |
| 611 Relating to the prematurity of final rejection (37 CFR 1.181, MPEP 706.07(c)) | 629 For withdrawal of attorney from application pending in group (37 CFR 1.36) |
| 612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19) | 630 For extension of time in a reexamination (37 CFR 1.550(c)) |
| 613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03) | 631 To merge multiple reexamination proceedings (37 CFR 1.565(c), MPEP 2283) |
| 614 Relating to a requirement to cancel new matter from application (37 CFR 1.181, MPEP 608.04(c)) | 632 To effect a second conversion of inventorship (37 CFR 1.48, MPEP 201.03) |
| 615 Relating to formal sufficiency/propriety of affidavits (37 CFR 1.131, 1.132, 1.608, MPEP 715.07) | 633 Superconductivity |
| 616 To institute an interference (37 CFR 1.606) | 634 To correct inventorship in a patent not in interference (37 CFR 1.324, MPEP 1481) |
| 617 Relating to refusal to enter an amendment under 37 CFR 1.312 | 635 To change inventorship in an application (37 CFR 1.48) |
| | 636 To change inventorship in a patent (37 CFR 1.48) |
| | 637 To withdraw from issue before payment of an Issue fee (37 CFR 1.313(a)) |
| | 699 For matters before Group Director - not specified |

☐ PETITIONS DECIDED BY BOARD OF PATENT APPEALS AND INTERFERENCES

- | | |
|---|--|
| 701 To exercise supervisory authority re action by examiner/examiner-in-chief (37 CFR 1.644) | 711 To assign particular members to hearing or to request augmented panel (35 USC 7) |
| 702 To accept belatedly filed copies of interference settlement agreements (35 USC 135(c), 37 CFR 1.666(c)) | 712 To decide miscellaneous questions in proceedings under 37 CFR 1.601-1.688 |
| 703 For withdrawal of attorney in proceeding under 37 CFR 1.201 - 1.288 (37 CFR 1.36) | 713 To accept priority papers in applications in interference (37 CFR 1.644) |
| 704 For access to a settlement agreement under 35 USC 135(c) (37 CFR 1.666(b)) | 714 To reinstate an Appeal |
| 705 For access to an application in proceedings before the Board (37 CFR 1.14(e)) | 799 For matters before Chairman of Board - not specified |
| 706 From a refusal to issue a Certificate of Correction (37 CFR 1.322, 1.323) | 801 To make an application before the Board special (37 CFR 1.102) |
| 707 To correct errors in inventorship (37 CFR 1.324) | 802 To reinstate an Appeal |
| 708 For extension of time to file amendment under 37 CFR 1.196(b) (37 CFR 1.136) | 803 To extend time/suspend proceedings (37 CFR 1.196, 1.197, 1.304) |
| 709 To make an application before the Board special (37 CFR 1.102) | 804 For extension of time to file supplemental Reply Brief (37 CFR 1.136) |
| 710 For extension of time to file supplemental Reply Brief (37 CFR 1.136) | 805 To accept late request for an Oral Hearing (37 CFR 1.136) |
| | 899 For matters before the Clerk of the Board - not specified |

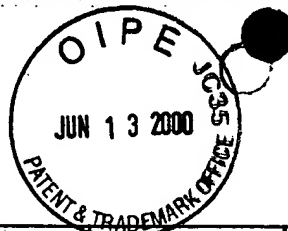
☐ PETITIONS DECIDED BY SPECIAL LAWS (SECURITY AND GOVERNMENT INTEREST MATTERS)

- | | |
|-----------------------|--|
| 901 Under 42 USC 2182 | 904 Under 35 USC 267 |
| 902 Under 42 USC 2457 | 905 To consider/review security or Government interest matters - not specified |
| 903 Under 35 USC 184 | |

☐ PETITIONS DECIDED BY THE SOLICITOR

- | | |
|---|---|
| 951 Petitions for extension of time in court matters 35 USC 142, 145, 146 | 953 Requests filed under the Freedom of Information Act |
| 952 Petitions relating to ex parte questions in cases before the Court of Appeals for the Federal Circuit | 959 Not specified |

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

KCP

| | | | |
|-----------------|-------------|----------------------|---------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|

08/071,052

06/04/93

KREAMER

J

467312465

HM22/0508

DAVIS, HOCKENBER, WINE,
BROWN, KOEHN & SHORS
666 WALNUT ST., STE. 2500
DES MOINES IA 50309

EXAMINER

CRIARES, T

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

05/08/00

Please find below and/or attached an Office communication concerning this application or proceeding.

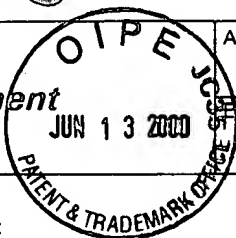
Commissioner of Patents and Trademarks

RECEIVED

MAY 12 2000

DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.

Notice of Abandonment



Application No.

08/071,052

Applicant(s)

Kreamer

Examiner

Theodore J. Criares

Group Art Unit

1614

This application is abandoned in view of:

- ☐ applicant's failure to timely file a proper response to the Office letter mailed on _____.
- ☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed response was received on _____, but it does not constitute a proper response to the final rejection.
(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC)).
- ☐ No response has been received.
- ☐ applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.
- ☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.
- The submitted issue fee of \$ _____ is insufficient. The issue fee required by 37 CFR 1.18 is \$ _____.
- ☐ The issue fee has not been received.
- applicant's failure to timely file new formal drawings as required in the Notice of Allowability.
- ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.
- ☐ The proposed new formal drawings filed _____ are not acceptable.
- ☐ No proposed new formal drawings have been received.
- ☐ the express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.
- ☐ the letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ the letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
- ☐ the decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☒ the reason(s) below:

Applicant's amendment filed December 1, 1999 arrived late without a Petition to Extend the time to Answer and the required fee. It is suggested that the applicant file a Petition to Revive this application with a declaration as to the facts and supporting documentation.

THEODORE J. CRIARES
PRIMARY EXAMINER
ART UNIT 1614



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Kreamer) Group Art Unit 1614
Serial No. 08/071,052)
Filed: June 4, 1993) Examiner Crirares
For: ASPIRIN AND VITAMIN AND/OR)
TRACE ELEMENT COMPOSITIONS)
FOR THE AMELIORATION AND)
TREATMENT OF VASCULAR DISEASE)

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Box Non-Fee Amendment
Washington, D.C. 20231

Dear Sir:

In the matter of the above-identified application for United States Letters Patent and in response to the Office Action believed to have been mailed on November 1, 1999 (there being no mailing date identified on the Paper and receiving no response to telephone messages left with Examiner Criares), which was a restriction requirement. This election is made with traverse.

AMENDMENT

Kindly add new claims 27 - 29 as follows:

27. A medicament for reducing atherosclerotic plaque formation at sites of endothelial damage in humans through the reduction of cholesterol incorporation into the endothelium comprising:

- (a) aspirin orally administered in a dose effective to block prostaglandin function in platelets sufficiently to reduce the

ability of platelets to go the site of the endothelial damage and recruit other cells to assist in thrombosis; and

- (b) a vitamin orally administered in a dose effective to reduce the migration of cholesterol into the endothelium, wherein said multivitamin comprises at least one vitamin selected from the group including niacin, vitamin C, vitamin E, vitamin A, and vitamin B₆.

28. A medicament as defined in claim 27, wherein said multivitamin contains between about 10 percent and 200 percent of the United States Recommended Daily Allowance of at least one vitamin selected from the group consisting of vitamin A, vitamin B₆, vitamin C, vitamin E, and niacin.

29. A medicament as defined in claim 27, wherein said effective dose of aspirin is between about 20 milligrams and about 325 milligrams of aspirin per day.

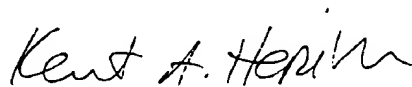
REMARKS

The Examiner made a restriction requirement under 35 U.S.C. 121, asserting that the claims were drawn to a synergistic combination even though the claims 11-26 currently pending in the application were all method claims directed to a method of ameliorating or treating atherosclerosis. It is believed that the method claims and composition of matter claims inserted by the foregoing amendment comprise a single inventive concept that may all properly be presented in a single application and that the

restriction requirement will lead to an undue multiplication of patent applications with the concomitant burden on applicant in fees and expenses of duplicative prosecution. In any event, three composition of matter claims 27 – 29 have been added to the application and are provisionally elected.

No mailing date was provided on the restriction requirement and a telephone messages left to Examiner Criares asking for the mailing date were not returned. Based on the receipt date of November 5, it is not believed that the mailing date was earlier than November 1, 1999, and so this response is believed to be timely.

Respectfully submitted,



Date: 11/30/99

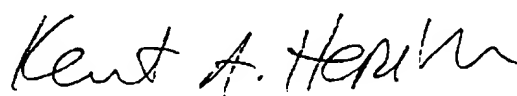
By: _____

Kent A. Herink
Registration No. 31,025
DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.
666 Walnut St., Suite 2500
Des Moines, Iowa 50309
Telephone: (515) 288-2500

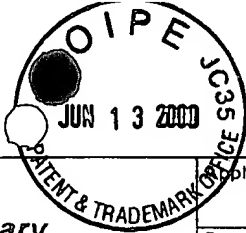
ATTORNEYS FOR APPLICANT

CERTIFICATE OF FACSIMILE FILING

I hereby certify that this correspondence is being transmitted by facsimile to the 1600 Group Receptionist at facsimile number 703-308-2742 on November 30, 1999.



Kent A. Herink



Office Action Summary

Application No.
08/071,052

Applicant(s)

Kreamer

Examiner
Theodore J. Criaras

Group Art Unit
1614



☒ Responsive to communication(s) filed on Sep 16, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 11-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 11-26 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1614

The final rejection of May 18, 1994 is withdrawn and prosecution is reopened.

Restriction to one invention is required under 35 U.S.C.

121.

The claims are drawn to a synergistic effect as taught by applicants at page 4, of the specification. Applicants are required to (1) elect a single disclosed synergistic combination of specific compounds even though the requirement be traversed and (2) to add a claim directed to that specific combination of compounds since none of applicants claims 11-26 claim a synergistic combination.


The restriction is deemed proper due to the fact that unrelated combinations of compounds yielding synergistic effects are inherently unpredictable and are hence capable of supporting separate and distinct patents.

It is also noted that one specific synergistic combination of two compounds is known to be chemically distinct from another specific synergistic combination of two compounds and reference to one combination would not necessarily be a reference against the other combination under 35 U.S.C. 103.

BEST AVAILABLE COPY

Art Unit: 1614

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Criares whose telephone number is (703) 308-4607.


THEODORE J. CRIARES
PRIMARY EXAMINER
GROUP 1200
1600

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